

QUEEN'S BENCH, MONTREAL

MR. JUSTICE WÜRTELE'S CHARGE TO THE GRAND JURY

Tuesday, 3rd September, 1895.

GENTLEMEN OF THE GRAND JURY :

The organization of a court of criminal jurisdiction contains four component parts : the judge, who presides, expounds the law, and ordains the enforcement of its decrees ; the grand jury, who examine the accusations brought before the court and see if there is reasonable cause for believing the charges laid ; the petty jury, who hear the evidence in support of the charge against an accused person and his defence, and decide after hearing both sides if he is innocent or guilty ; and the clerk, who issues process and records the proceedings.

The grand jury is chosen from the citizens of the judicial district who possess the qua-

lification determined by law, and consists of not more than twenty-three nor less than twelve jurors; but not less than twelve must join in finding a case against an accused person.

The accusations to be laid before the grand jury are reduced to writing in precise and technical language, and the document thus framed is called a bill. The bills are submitted to the grand jury by the crown or public prosecutor; but in exceptional cases, with the authorization of the presiding judge, they may be preferred by the counsel for the private prosecutor. The prosecuting attorney opens the case, or in other words explains the nature of the charge, but he must take no part in the discussion and must express no opinion either on the law or the facts of the case. The witnesses are brought before the grand jury by the prosecuting attorney and it is his duty to see that none but legal evidence is allowed to go to them. Usually, and for reasons of convenience and the expediting of business, the witnesses are examined by the prosecuting attorney; but any juror may put any questions he wishes to the witnesses, and the grand jury, if they desire it, may take the examination of the witnesses into their own hands and they may even cause the prosecuting attorney to retire. Sometimes the clerk of the crown, or his deputy, with the acquiescence of the grand jury, performs the

duty of the prosecuting attorney, but, whatever part he takes in the proceedings, he is only required to retire when the grand jury deliberate.

The names of the witnesses to be heard are inscribed on the back of the bill. They are sworn by the foreman, or by the juror acting in his place if he should be absent and the juror swearing a witness places his initials at the end of the name of such witness on the bill. The grand jury need not hear all the witnesses mentioned on the bill; but, if they should desire to examine any person whose name is not entered on the bill, they must get for that purpose the written order of the presiding judge.

When the grand jury deliberate on a case, after having heard the evidence, the prosecuting attorney, if he has not previously retired, and the clerk of the crown must withdraw, as the grand jury must then be alone. If twelve jurors are of opinion that there is a probable case against the accused person, they find a true bill, and the bill then becomes an indictment. If, however, the grand jury think that the case for the prosecution is so trumpery that the accused person ought not to be subjected to the disgrace of being put into the dock and made to plead, or twelve jurors do not agree that there is a case, the bill should be thrown out. When a bill is considered to be well founded it is

endorsed on its back with the words " a true bill," and when, on the contrary, it is considered to be unfounded it is indorsed with the words " no bill." In both cases it is so indorsed by the foreman, or by his substitute, who signs his name under the entry and writes his official designation below his signature. All bills so passed upon and indorsed are brought into open court and are delivered to the clerk, who then publicly announces the findings.

You must only proceed on the bills which are submitted to you by the crown or public prosecutor, or which the presiding judge allows to be preferred to you by a private prosecutor.

You must keep the secret of what transpires at your sittings, and you should therefore avoid all communication with the accused and their counsel with respect thereto. Should any attempt be made to corruptly influence any of you, it will be your duty to inform the presiding judge of such attempt, which would constitute a crime, called embracery, punishable by fine and imprisonment.

I regret to see by the docket, or the list of the cases which will be brought before the court at the present term, not only that the number of cases is unusually large but that there are many charges of the gravest character. Montreal is growing rapidly, and with

the increase of its permanent and transient inhabitants there must be necessarily an increase in the number of crimes committed. When we consider, however, the number of cases usually brought before our courts, and the absence for many years of capital cases, the population of our city and of the rural parts of our district may well be characterized as a peaceable and a generally law abiding one ; but within the last few months an epidemic of crime seems to have struck us, and we find on the docket charges for such grave crimes as murder, indecent assault, arson, forgery, perjury and conspiracy, and an unusually large number of the minor charges ordinarily brought before the court, such as theft, stealing from the person and receiving stolen goods.

While I am glad to acknowledge the utility of the public press, and I desire that its liberty of expression should only be restrained when the writings published degenerate into libel and license, I cannot help regretting the sensational nature of many of the articles published in some of our newspapers in reporting the proceedings before our criminal courts. These articles, with their sensational headings, tend not only to influence morbid and unbalanced persons and to conduct them, under the effect of the emotional feeling and glamour produced, to the commission of crime, but also to unconsciously affect and

even bias the minds of citizens who may be called to act as jurors. Articles of this kind, like dime novels, are hurtful to young people and often inspire pernicious ideas which take them from the straight path. The publishers of such newspapers are, however, within their legal rights while publishing these articles; and, if I make these remarks, it is not because they are in any way subject to judicial blame, but in the hope that when the objectionableness of this style of publication is directly brought to their notice, they may be induced to adopt a quieter mode of writing and of heading their articles. The publication of reports of the proceedings in our criminal courts is proper and useful; but it seems to me that if our newspapers generally would adopt the style of the reports published in the leading newspapers in England, their reports would be more suitable and of greater advantage to the public.

It may be useful to give you a few words of explanation about the nature of the most serious of the accusations which will be laid before you.

Homicide is the killing of one human being by another, and murder is an unlawful homicide with malice aforethought. In legal contemplation all homicide amounts to murder unless and until this presumption is rebutted. As your investigation is not a trial, but is merely made to ascertain if there is reason-

able cause to place the accused person on his trial, so soon as the unlawful killing by the accused person of the human being mentioned in the bill is shown by the evidence to be probable, you should find a true bill, leaving all matters of excuse to be pleaded at the trial. It is likely that in some of the cases of murder to be brought before the court during this term, insanity will be pleaded as a defence, but as the insanity of the accused person can only be urged as a matter of excuse for the crime, you have no right to ignore a bill on account of the accused person's insanity, however clearly shown ; but you must, if the killing by him is proved or is shown to be probable, find and return a true bill. Murder is the intentional killing of a person ; manslaughter is also the killing of a person, but it differs from murder in the absence of any intention to kill. It is a crime, however, when committed by a person doing an unlawful act, or when it occurs by gross and wicked negligence.

An indecent assault is where one person applies force to the person of another with the intention of committing an offence against chastity. In cases of this nature, the bill often contains two counts or distinct accusations, one for an indecent assault and the other for a common assault ; and in such cases, if the lesser offence alone is established,

you should only find a true bill as to the second count.

Arson is the wilfully setting fire to a building, a stack or a ship, and is an offence which the law looks upon and punishes as a grave crime. It is no defence to show that the offence was committed without any malice against the owner of the property, for it is an attack on the right of property and a crime against the protection due to society generally ; but where the accused person is charged with setting fire to his own house or buildings, an intent to defraud must be established, as, for example, by proving that he had effected an insurance on the premises.

Forgery, in short, consists in the making or the alteration of a document or commercial writing with intent to defraud. It is equally forgery to apply a false signature to a genuine instrument or a genuine signature to a false instrument ; and it is immaterial whether a false signature is that of a real or of a fictitious person. This crime is one which the commercial world is greatly interested in repressing, to maintain the credit to be given to commercial paper and the speedy transaction of business, and is therefore one for which the law imposes condign punishment.

Perjury is the act of wilfully swearing falsely on a trial, or in some judicial proceeding, or in an affidavit authorized by law, whether the false statement is material or not. Where the

law allows an affirmation to be made in the place of an oath, any false statement so made is also perjury. Two witnesses are generally required in a perjury case, as otherwise it would be oath against oath. One witness suffices, however, where circumstances are proved which corroborate him. Although the law punishes perjury by imprisonment, the person found guilty of this crime suffers one far severer, for ever after he is stamped as one whose word under oath is unworthy of belief.

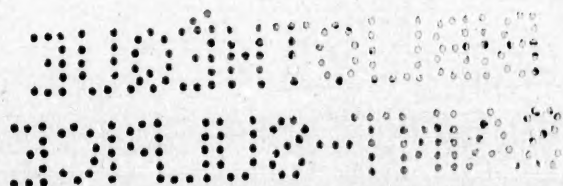
Conspiracy may be shortly defined to be an agreement between two or more persons to carry into effect some hurtful purpose, though the hurtfulness need not be criminal. But one person alone may be indicted and tried for conspiracy, provided he be accused of having conspired with others. It is not necessary that any act should have been done by the conspirators in pursuance of their agreement ; the mere agreement is sufficient and constitutes the offence.

Whenever the evidence laid before you on a bill for any of these crimes shows the existence of its essentials and brings the crime home to the accused or makes it reasonably probable that he committed it, you should find a true bill ; but if any of the essentials is wanting, or the evidence does not either show guilt or establish a strong presumption of it, then you should reject the bill.

The minor offences which I mentioned, theft, stealing from the person and receiving stolen goods, hardly require an explanation. If, however, you should desire any information about any matter connected with a charge of this nature, or any further explanation with respect to a charge for any of the crimes which I have defined, you may apply, at any suitable time, to me or to whomever may be the presiding judge, and such information as you want will be at once given to you.

The safety of our streets is of the first importance to all ; and in connection with this subject I may mention two things, small in themselves, which detract from the safety of foot passengers : bicycles, and orange and banana peels thrown on the streets. As the city council has the power, under pain of fine or imprisonment, to regulate the usage of bicycles and to forbid the throwing of orange and banana peels on the street, you may perhaps think it well to draw its attention to these matters.

You will now retire to your room and proceed with your work.



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